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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,793	01/20/2004	Michael James Bleau	MB-1-CIP	2289
7590	09/20/2004			
Fernando A. Borrego 1238 Balfour Street Grosse Pointe Park, MI 48230			EXAMINER DANG, HUNG XUAN	
			ART UNIT 2873	PAPER NUMBER

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/761,793

Applicant(s)

BLEAU, MICHAEL JAMES

Examiner

Hung X Dang

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **Information Disclosure Statement**

1. If applicant is aware of any relevant prior art, he/she requested to cite it on form **PTO-1449** in accordance with the guidelines set forth in M.P.E.P. 609.

### **Claims Rejection Under 35 USC - 103**

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wargon (5,949,514).

Wargon discloses adhesive eyeglasses which comprises lens 24 having a perimeter that defines a cutout 22 along a nose portion thereof, and a frame 14 having an adhesive side 28 comprising a first portion and a second portion, wherein said first portion runs along the perimeter nose portion of said lens. However, the adhesive side is formed a seal between the frame and the user's face, but not both a seal between the frame and the user's face and a seal between the frame and the lens as claimed.

Although Wargon device does not teach the position of the lens on the same side of the adhesive side as that claimed by applicant, the position of the lens on either side of the frame are considered obvious choices and are not patentable unless unexpected results

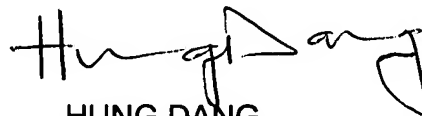
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are obtained from these changes. Therefore, it would have been obvious to a person having ordinary skill in this art to modify the Wargon's device of affixing the lens to the frame on the same side of the adhesive side as the applicant's. Such a modification of the position of the lens would not change the scope of the invention in the Wargon reference.

Regarding claims 4 and 5, the limitations in claims 4 and 5 are similar to claim 1 but the frame comprising a compliant and resiliently deformable material suitable to conform to a user's face. Wargon suggest in column 2, lines 48-51 that the frame may be made of flexible material so that the frame is capable of readily conforming to the different facial structure of different individuals. Therefore it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the frame as suggested by Wargon reference for the same purpose as disclosed by Wargon as the same as the applicant does.

3. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (571) 272-2326.

9/04



HUNG DANG

PRIMARY EXAMINER

TC 2800